

HOUSE BILL REPORT

ESHB 1020

As Passed Legislature

Title: An act relating to siting electrical transmission under the energy facility site evaluation council.

Brief Description: Regarding electrical transmission.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Morris and B. Sullivan).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/14/05, 1/27/05 [DPS].

Floor Activity:

Passed House: 2/28/05, 93-2.

Senate Amended.

Passed Senate: 4/15/05, 46-0.

Floor Activity:

Passed House: 1/27/06, 98-0.

Senate Amended.

Passed Senate: 2/28/06, 48-0.

House Concurred.

Passed House: 3/4/06, 96-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows a person developing new electric transmission lines in excess of 115 kilovolts to seek site certification through the Energy Facility Site Evaluation Council (EFSEC).
- Designates the EFSEC as the state authority for siting transmission facilities under the national Energy Policy Act of 2005.
- Allows facilities generating electricity using alternative energy resources to use EFSEC site certification process.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Ericks, Haler, Hudgins, Nixon, P. Sullivan, Sump, Takko and Wallace.

Staff: Scott Richards (786-7156).

Background:

National Energy Policy Act of 2005

The National Energy Policy Act of 2005 (Act) was signed into law August 2005. Section 1221 of the Act authorizes the U.S. Secretary of Energy (Secretary) to conduct a study within one year of passage, and triennially thereafter, of electric transmission congestion. The Secretary will issue a report based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest energy electric transmission corridor.

In determining whether to designate a particular area as a national interest electric transmission corridor, the Secretary may consider the following:

whether the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity; whether economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and a diversification of supply is warranted; whether the energy independence of the United States would be served by the designation; whether the designation would be in the interest of national energy policy; and whether the designation would enhance national defense and homeland security.

FERC's Backstop Authority

The Act authorizes the Federal Energy Regulatory Commission to issue permits for construction or modification of electric transmission in a national interest transmission corridor if:

- a state does not have siting authority;
- a state does not consider interstate benefits;
- a state has withheld approval for more than one year after the filing of an application or one year after the designation as a national interest electric transmission corridor; or
- a state has conditioned its approval in such a manner that there will be no significant reduction of transmission congestion.

EFSEC Licensing

The Energy Facility Site Evaluation Council (EFSEC) was created in 1970 to provide one-stop licensing for large energy projects. The EFSEC's membership includes mandatory representation from five state agencies and discretionary representation from four additional state agencies. The EFSEC's membership may include representatives from the particular city, county, or port district where potential projects may be located.

The EFSEC's jurisdiction includes the siting of large intrastate natural gas and petroleum pipelines, electric power plants above 350 megawatts, new oil refineries, large expansions of existing facilities, and underground natural gas storage fields. For electric power plants, the

EFSEC's jurisdiction extends to those associated facilities that include new transmission lines that operate in excess of 200 kilovolts and are necessary to connect the plant to the Northwest power grid. Developers of energy facilities that exclusively use alternative energy resources, regardless of the size of the facility's generation capacity, may choose to use the EFSEC process to site the facility.

The EFSEC siting process generally involves six steps: (1) a potential site study followed by an application; (2) State Environmental Policy Act review; (3) review for consistency with applicable local land use laws and plans; (4) a formal adjudication on all issues related to the project; (5) certain air and water pollution discharge permitting reviews as delegated by the U.S. Environmental Protection Agency; and (6) a recommendation to the Governor who then decides whether to accept, reject, or remand the application. A certification agreement approved by the Governor preempts any other state or local regulation concerning the location, construction, and operational conditions of an energy facility. Under the EFSEC process, the applicant is required to pay the costs of the EFSEC in processing an application.

County and City Growth Management

Under the Growth Management Act, certain counties and cities must develop comprehensive land use plans outlining the coordinated land use policy of the county or city. The comprehensive land use planning process includes adopting development regulations, such as zoning ordinances, critical areas ordinances, and binding site plan ordinances.

Summary of Engrossed Substitute Bill:

A person or entity developing new transmission lines or expanding or reconstructing existing transmission lines that operate in excess of 115 kilovolts may use the EFSEC process to obtain siting approval for the transmission lines. Facilities that generate electricity using alternative energy resources as the source of power may use the EFSEC facility siting process.

The definition of "transmission facility" is amended to include electrical transmission facilities in excess of 115,000 volts in national interest electric transmission corridors as designated by the United States Secretary of the Department of Energy or the Federal Energy Regulatory Commission in accordance with Section 1221 of the national Energy Policy Act of 2005.

The Legislature finds that the siting of electrical transmission facilities at or under 115,000 volts has historically been regulated by local government.

The EFSEC is designated as the state authority for purposes of siting transmission facilities under the national Energy Policy Act of 2005. The EFSEC's authority regarding transmission facilities is limited to those transmission facilities that are subject to Section 1221 of the national Energy Policy Act of 2005. When EFSEC develops recommendations for any application for the construction or modification of transmission facilities, the fuel source of the electricity carried by the transmission facilities shall not be considered. The EFSEC must convey to the United States Secretary of Energy the views of interested parties in the state concerning the appropriate limits on federal authority over transmission siting in the state.

When siting transmission facilities are subject to Section 1221, EFSEC may consider interstate benefits of the facilities in the state.

A person or entity apply for energy facility site certification must pay reasonable costs incurred by members of the EFSEC in processing the application which may include but are not limited to council member's wages and employee benefits.

The public hearing process for site certification has been updated to include city land use and zoning ordinances in accordance with the Growth Management Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support of original bill) The issue of availability of new transmission and siting of that transmission is a growing issue. The availability of new transmission is a problem in the Western United States and in Washington. The need for new transmission is growing and transmission is integral to delivering generation where it is needed. In addition, those that are building most of the transmission now have eminent domain authority. In the future, there will be more merchant development of transmission that is privately financed and will not have eminent domain authority. The bill will facilitate siting of merchant built lines. Giving the EFSEC this jurisdiction is a tool for entities working to accommodate growth in the state.

The intent of the bill is also to give local jurisdictions time and the option to site new transmission corridors within their jurisdiction and, if the local jurisdictions do not do so by July 1, 2007, then the EFSEC would have jurisdiction.

There is concern regarding clarifying when and where the EFSEC has jurisdiction and the relationship of that jurisdiction to the requirements of the Growth Management Act.

Testimony Against: (With concerns to original bill) There are concerns about the impact this might have on local jurisdictions that might site transmission. First, the bill requires cities and counties to amend their comprehensive plans and not all cities and counties are required to do a comprehensive land use plan. In addition, there is cost associated with amendment comprehensive plans. There is also concern that it is an expensive and lengthy process for counties and cities to go through the siting process on their own. The bill would force cities and counties to either accept a developer's application or to go through the expensive and lengthy process on their own.

Persons Testifying: (In support of original bill) Representative Morris, prime sponsor.

(With concerns to original bill) Kathleen Collins, PacifiCorp; Scott Merriman, Association of Counties; Victoria Lincoln, Association of Washington Cities; and Mike Tracey, Puget Sound Energy.

Persons Signed In To Testify But Not Testifying: None.